Their standing for that purpose, at least in the state courts, is a question of state practice (*Columbus & Greenville Ry. Co.* v. *Miller*, 283 U.S. 96, 99; *Braxton County Court* v. *West Virginia*, 208 U.S. 192, 197, 198; *Stewart* v. *Kansas City*, 239 U.S. 14, 16), as to which the federal courts do not exercise an independent judgment.

The Maryland decisions proceed on the assumption that municipal corporations assailing a statute of exemption or other special legislation have an interest in the controversy which entitles them to be heard (*Baltimore* v. *Starr Church, supra; Baltimore* v. *Alleghany County*, 99 Md. 1; 57 Atl. 632), though the reports do not show that their interest was questioned.

In the absence of any argument to the contrary in behalf of the petitioner, we make the same assumption here.

The judgments are *Reversed.*

BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS *v.* UNITED STATES

CERTIORARI TO THE COURT OF CUSTOMS AND PATENT APPEALS

No. 538. Argued February 17, 1933.—Decided March 20, 1933

1. The power of Congress to regulate commerce with foreign nations is plenary and exclusive, not subject in its exercise to be limited, qualified or impeded to any extent by state action. P. 56.
2. This power is buttressed by the express provision of the Constitution denying to the States authority to lay duties on imports or exports without the consent of Congress. P. 57.
3. Although the taxing power is a distinct power and embraces the power to lay duties, it is established that duties may also be imposed in the exercise of the power to regulate commerce. P. 58.
4. Where Congress exercises its power to regulate foreign commerce by means of a tariff, declaring, as in the Tariff Act of 1922, that it is so exercising it, the judicial department may not attempt, in its own conception of policy, to distribute the duties thus fixed, by allocating some of them to the exercise of the power to regulate commerce and others to an independent exercise of the taxing power. P. 58.

5. It is for Congress to say to what extent the States and their instrumentalities shall be relieved of the duties on articles imported by them. P. 59.
6. The principle of state immunity from federal taxation springs from and is limited by the necessity of maintaining our dual system of government, and has no application to duties imposed in the exercise of the power to regulate foreign commerce. P. 59.

20 C.C.P.A. (Cust.) 134; 61 Treas. Dec. 1334, affirmed.

CERTIORARI, 287 U.S. 596, to review the affirmance of a decision of the Customs Court (59 Treas. Dec. 747), overruling protests made by the trustees and officers of the University of Illinois against customs duties collected on articles imported by it for use in one of its educational departments.

Mr. Sveinbjorn Johnson for petitioner.

The petitioner is in law a public, as distinguished from a private, corporation. *Thomas* v. *Industrial University,* 71 Ill. 310, 312; *Spalding* v. *People,* 172 Ill. 40; *People* v. *Board,* 283 Ill. 494, 499.

The instrumentalities which the States have created for the purpose of operating universities have generally been held to be mere instrumentalities or departments of the State itself. *State* v. *Chase,* 175 Minn. 259; *Auditor* v. *Regents,* 83 Mich. 467, 468; *Oklahoma* v. *Willis,* 6 Okla. 593; *Neil* v. *Board,* 31 Ohio St. 15; *Russell* v. *Purdue University,* 201 Ind. 367; *University* v. *Peoples Bank,* 157 Tenn. 87.

Congress may not tax the States or their governmental agencies. *Collector* v. *Day,* 11 Wall. 113, 124; *South Carolina* v. *United States,* 199 U.S. 437; *Indian Motocycle Co.* v. *United States,* 283 U.S. 570; *Burnet* v. *Coronado Oil & Gas Co.,* 285 U.S. 393; *Clallam County* v. *United States* and *United States* v. *Spruce Corp.,* 263 U.S. 341, 344; *Willcuts* v. *Bunn,* 282 U.S. 216; *Johnson* v. *Maryland,* 254 U.S. 51, 55–56.

The customs duty is a tax. *Brown* v. *Maryland,* 12 Wheat. 419, 436, 439; *Hampton & Co.* v. *United States,*

276 U.S. 394, 411, 412; *United States* v. *Shallus*, 9 Ct. Cust. App. 168, 171.

The Tariff Act is a revenue measure in the constitutional sense, notwithstanding its provisions are so adjusted as to have a regulatory effect on commerce. *Hampton & Co.* v. *United States*, 276 U.S. 394, 411.

The intent of Congress in arranging the schedules of customs duties may have been to encourage—to regulate—certain industries within certain States, a purpose, which, if primary and "shown upon the face of the Act" (*Drexel Furniture Co.* v. *Bailey*, 259 U.S. 20, 43) would have been beyond the power of Congress; nevertheless, the Act is constitutional because the primary purpose—in the constitutional sense—is revenue, although the desired and undisclosed economic results lie within a field beyond the power of Congress to enter. *Hampton & Co.* v. *United States, supra; McCray* v. *United States*, 195 U.S. 27; *Knowlton* v. *Moore*, 178 U.S. 41; *Veazie Bank* v. *Fenno*, 8 Wall. 533; *United States* v. *Doremus*, 249 U.S. 86; *Hammer* v. *Dagenhart*, 247 U.S. 251; and *Drexel Furniture Co.* v. *Bailey*, 259 U.S. 20.

Regulations under the commerce clause (Art. I, § 8, par. 3) need not be uniform throughout the United States, *Clark Distilling Co.* v. *Western Missouri Ry. Co.*, 242 U.S. 311, 327; *Alaska* v. *Troy*, 258 U.S. 101. Customs duties and excises must be uniform. Art. I, § 8, par. 1. If the position of the lower court be sound, customs duties might be one thing at the port of Los Angeles and another for that of San Francisco, etc., and they would be sustained on the claim that they were assessed under the clause to regulate commerce, which does not require uniformity. Congress obviously can not play ducks and drakes with these constitutional powers. The Act under which the duty challenged is levied is, in general, a revenue act, and the particular paragraphs clearly are revenue provisions.

When Congress enacts a law providing for import duties, it is exerting the taxing power, and not its power over commerce. This was settled as early as *Gibbons* v. *Ogden*, 9 Wheat. 1, 199, where Chief Justice Marshall says that the act of laying customs duties is an exertion of a "branch of the taxing power." To the same effect, see *State Tonnage Tax Cases*, 12 Wall. 204, and *Hampton & Co.* v. *United States*, 276 U.S. 394.

The power over commerce is subject to certain constitutional limitations. It is no more complete than the power to tax. *Drexel Furniture Co.* v. *Bailey*, 259 U.S. 20. It may not be so exerted as directly and substantially to burden or embarrass the States in the exercise of strictly governmental activities. *Adair* v. *United States*, 208 U.S. 161.

This Court, even when speaking of a power so vital to the very existence of the Nation as is that of taxation, has always made it plain that there is little room for the concept of arbitrary power in our constitutional scheme. *Veazie Bank* v. *Fenno*, 8 Wall. 533, 541.

The grant of power over interstate and foreign commerce is in the same terms, "and the two powers are undoubtedly of the same class and character and equally extensive," *Bowman* v. *Chicago Ry. Co.*, 125 U.S. 465, 482; and "the power of Congress over interstate commerce is as absolute as its power over foreign commerce" under the commerce clause. *Brown* v. *Houston*, 114 U.S. 622, 630; *Crutcher* v. *Kentucky*, 141 U.S. 47, 56.

The lower court seems to assume that the power to declare an embargo—Justice Story said that ". . . the embargo . . . stands on the extreme verge of the Constitution," Story, I, 185, Autobiographical Sketch, 1831—is sustainable exclusively under the commerce clause, whereas its validity rests more logically on the doctrine of "resulting powers" (resulting or implied from a num-

ber of enumerated powers), adverted to by Justice Story in his Commentaries on the Constitution, Book III, Chap. XXIV, but to be carefully differentiated from the concept of inherent powers derived from the notion of "inherent sovereignty."

If the commerce clause gives Congress power to levy customs duties, it must also imply a power to levy excise taxes on interstate commerce, a proposition which we deny *in toto*. The anomaly of denying Congress the power to authorize a tax on the sale of a motorcycle to a city for a policeman's use (*Indian Motocycle Co.* v. *United States*, 283 U.S. 570) as a direct and unconstitutional burden on a strictly governmental instrumentality, and permitting such a direct burden when imposed in the assumed exercise of the power over commerce, seems to have escaped the notice of the lower court.

If the power to levy the duty challenged is neither an express nor an implied power, it can not be sustained as an exercise of an inherent power. *Kansas* v. *Colorado*, 206 U.S. 46.

Solicitor General Thacher, with whom *Assistant Attorney General Lawrence* and *Mr. Erwin N. Griswold* were on the brief, for the United States.

The power of Congress over foreign commerce is not subject to any implied limitation in favor of the States. It includes the power to impose a protective tariff, and the States are not exempt from the payment of duties unless Congress so declares. *Gibbons* v. *Ogden*, 9 Wheat. 1, 193, 196–197.

Although later decisions have shown that the power of Congress over interstate commerce is subject to some limitations (see *Hammer* v. *Dagenhart*, 247 U.S. 251), these limitations do not extend to the power to regulate commerce with foreign nations and with the Indian tribes. See Fuller, C.J., dissenting in the *Lottery Case*,

188 U.S. 321, 374; *United States* v. *43 Gallons of Whiskey,* 93 U.S. 188, 194; *Buttfield* v. *Stranahan,* 192 U.S. 470, 492–493. *Oceanic Navigation Co.* v. *Stranahan,* 214 U.S. 320, 334; *The Abby Dodge,* 223 U.S. 166, 176; *Brolan* v. *United States,* 236 U.S. 216, 218; *Weber* v. *Freed,* 239 U.S. 325, 329. Cf. *Atlantic Cleaners & Dyers* v. *United States,* 286 U.S. 427, 434.

Congress may exercise this plenary power over foreign commerce for the encouragement and protection of American industries, and this purpose may be accomplished by levying duties upon the products of foreign countries not for the sake of revenue but to exclude from our markets the competition of foreign goods. *Hampton & Co.* v. *United States,* 276 U.S. 394, 411. Cf. *Alaska Fish Co.* v. *Smith,* 255 U.S. 44, 48; 1 Stanwood, American Tariff Controversies, 293–294; Annals of Congress, Mar. 31, 1824, p. 1994. See 2 Story, Commentaries on Const., §§ 1077–1095, and the material collected at pp. 138–153 of the brief for the United States in *United States* v. *Realty Co.,* 163 U.S. 427, Nos. 869, 870, October Term, 1895. See also 1 Stanwood, American Tariff Controversies, c. IX; Winston, The Tariff and the Constitution, 5 Jour. Pol. Econ. 40; Cahill, Curtis and Backworth, "Is .a Protective Tariff Constitutional?" 1 Mich.L.J. 348; 2 Willoughby, Const. Law, 680.

The grant of power to Congress to impose a protective tariff would be largely futile if the States might import from abroad as they chose. *South Carolina* v. *United* States, 199 U.S. 437.

It is established by *Veazie Bank* v. *Fenno,* 8 Wall. 533, that regulation may take the form of taxation. See also *Head Money Cases,* 112 U.S. 580, 595–596; 2 Story, Commentaries, §§ 1080, 1081, 1088.

That the regulation is valid although it takes the form of a tax seems necessarily to follow from the decisions holding that the power to regulate foreign commerce in-

cludes the power to prohibit the importation of any article. *Buttfield* v. *Stranahan,* 192 U.S. 470; *Brolan* v. *United States,* 236 U.S. 216; *Weber* v. *Freed,* 239 U.S. 325. At an early date, the power of Congress to regulate foreign commerce was exercised by a complete embargo on all foreign commerce. Act of December 22, 1807, c. 5, 2 Stat. 451, as supplemented by the Act of January 9, 1808, c. 8, 2 Stat. 453. The statute was sustained in *United States* v. *The Brig William,* 2 Hall Law J. 255, Fed. Cas. No. 16700. See 2 Story, Commentaries, §§ 1290, 1292; Kent's Commentaries, 431–432. This power has been exercised in many subsequent Acts, including §§ 305, 306, and 307 of the Tariff Act of 1922.

The States reserved no power with reference to the importation of merchandise, and none may be implied in derogation of the constitutional power of Congress. The Constitution not only expressly gives to Congress the power to lay and collect duties and imposts (Art. I, § 8, par. 1), but the States are expressly forbidden to "lay any Imposts or Duties on Imports or Exports," with the exceptions which are not material here (Art. I, § 10, par. 2).

The plenary power to regulate foreign commerce, including the power to prohibit as well as to tax, if exercised without discrimination may not be challenged as destructive of the States and their instrumentalities of government.

Further support for the correctness of these conclusions is found, we believe, in (1) the long continued practical construction of the Constitution with respect to the power of Congress to collect duties on state imports, (2) by the analogy of decisions under other clauses of the Constitution, and (3) by considerations derived from this Court's decision in *South Carolina* v. *United States,* 199 U.S. 437.

See *Little* v. *United States,* 104 Fed. 540; *University of Missouri* v. *United States,* T.D. 26641, 10 T.D. 135; *Eimer*

v. *United States,* T.D. 27089, 11 T.D. 213; *United States* v. *Wyman & Co.,* 2 Ct. Cust. App. 440; *United States* v. *Kastor & Bros.* 6 Ct. Cust. App. 52. See also 21 Op.A.G. 301.

It has been the uniform practice of the Treasury for a great many years not to exempt imports by States or state instrumentalities if they were otherwise taxable under the Tariff Acts. It appears that for 135 years after the adoption of the Constitution the officials of the States did not question the power of Congress to impose duties on their imports, and did not even think the matter doubtful enough to warrant an application to the Treasury for a ruling. The earliest published ruling is in 48 T.D. 728 (1925).

It seems to be well settled that a State engaging in commerce is not exempt from the regulatory power of Congress. *South Carolina* v. *United States,* 199 U.S. 437, 454; *Georgia* v. *Chattanooga,* 264 U.S. 472, 481; *McCallum* v. *United States,* 298 Fed. 373, cert. den., 266 U.S. 606; *Tilden* v. *United States,* 21 F. (2d) 967; *Mathewes* v. *Port Utilities Comm'n,* 32 F. (2d) 913. Cf. *Sherman* v. *United States,* 282 U.S. 25.

State or municipally-owned railroads have often submitted to the jurisdiction of the Interstate Commerce Commission without question.

Another example of this practical construction of the commerce clause appears in the Act of February 17, 1917, c. 84, 39 Stat. 922 (U.S.C., Title 49, § 53), allowing the issuance of passes to the trustees, officers, and agents of a railroad owned by a State. Also the Act of January 19, 1929, c. 79, 45 Stat. (U.S.C. Supp. VI, Title 49, § 65), which divests convict-made goods of their interstate commerce character. Other analogies are the ex-

clusive power of Congress with respect to aliens; 26 Ops.A.G. 180; *id.*, 410; 27 Ops.A.G. 479; bankruptcy; patents and copyrights.

Messrs. William A. Schnader, Attorney General of Pennsylvania, and *William A. Stevens,* Attorney General of New Jersey, by leave of Court, filed a brief as *amici curiae.*

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The University of Illinois imported scientific apparatus for use in one of its educational departments. Customs duties were exacted at the rates prescribed by the Tariff Act of 1922, c. 356, 42 Stat. 858. The University paid under protest, insisting that as an instrumentality of the State of Illinois, and discharging a governmental function, it was entitled to import the articles duty free. At the hearing on the protest, the Customs Court decided in favor of the Government (59 Treas. Dec. 747) and the Court of Customs and Patent Appeals affirmed the decision. 61 Treas. Dec. 1334. This Court granted certiorari. 28 U.S.C. § 308; 287 U.S. 596.

The Tariff Act of 1922 is entitled—"An Act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes." The Congress thus asserted that it was exercising its constitutional authority "to regulate commerce with foreign nations." Art. I, § 8, par. 3. The words of the Constitution "comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other, to which this power does not extend." *Gibbons* v. *Ogden,* 9 Wheat. 1, 193. It is an essential attribute of the power that it is exclusive and plenary. As an exclusive power, its exercise may not

be limited, qualified or impeded to any extent by state action. *Id.* pp. 196–200; *Brown* v. *Maryland,* 12 Wheat. 419, 446; *Almy* v. *California,* 24 How. 169, 173; *Buttfield* v. *Stranahan,* 192 U.S. 470, 492, 493. The power is buttressed by the express provision of the Constitution denying to the States authority to lay imposts or duties on imports or exports without the consent of the Congress. Art. I, § 10, par. 2.

The Congress may determine what articles may be imported into this country and the terms upon which importation is permitted. No one can be said to have a vested right to carry on foreign commerce with the United States. *Buttfield* v. *Stranahan, supra; The Abby Dodge,* 223 U.S. 166, 176, 177; *Brolan* v. *United States,* 236 U.S. 216, 218, 219; *Weber* v. *Freed,* 239 U.S. 325, 329, 330. If the Congress saw fit to lay an embargo or to prohibit altogether the importation of specified articles, as the Congress may (*The Brigantine William,* 2 Hall's Amer.L.J., 255; Fed. Cas. No. 16700; *Gibbons* v. *Ogden, supra,* pp. 192, 193; *Brolan* v. *United States, supra; Weber* v. *Freed, supra; Atlantic Cleaners & Dyers* v. *United States,* 286 U.S. 427, 434), no State by virtue of any interest of its own would be entitled to override the restriction. The principle of duality in our system of government does not touch the authority of the Congress in the regulation of foreign commerce.

Appellant argues that the Tariff Act is a revenue measure; that it is not the less so because it is framed with a view, as its title states, of encouraging the industries of the United States (*Hampton & Co.* v. *United States,* 276 U.S. 394, 411, 412); that the duty is a tax, that the Act is not one for the regulation of commerce but is an exertion of the taxing power, and that, as such, it is subject to the constitutional limitation that the Congress may not lay a tax so as to impose a direct burden upon an instru-

mentality of a State used in the performance of a governmental function.

It is true that the taxing power is a distinct power; that it is distinct from the power to regulate commerce. *Gibbons* v. *Ogden, supra,* p. 201. It is also true that the taxing power embraces the power to lay duties. Art. I, § 8, par. 1. But because the taxing power is a distinct power and embraces the power to lay duties, it does not follow that duties may not be imposed in the exercise of the power to regulate commerce. The contrary is well established. *Gibbons* v. *Ogden, supra,* p. 202. "Under the power to regulate foreign commerce Congress impose duties on importations, give drawbacks, pass embargo and non-intercourse laws, and make all other regulations necessary to navigation, to the safety of passengers, and the protection of property." *Groves* v. *Slaughter,* 15 Pet. 449, 505. The laying of duties is "a common means of executing the power." 2 Story on the Constitution, § 1088. It has not been questioned that this power may be exerted by laying duties "to countervail the regulations and restrictions of foreign nations." *Id.,* § 1087. And the Congress may, and undoubtedly does, in its tariff legislation consider the conditions of foreign trade in all its aspects and effects. Its requirements are not the less regulatory because they are not prohibitory or retaliatory. They embody the congressional conception of the extent to which regulation should go. But if the Congress may thus exercise the power, and asserts, as it has asserted here, that it is exercising it, the judicial department may not attempt in its own conception of policy to distribute the duties thus fixed by allocating some of them to the exercise of the admitted power to regulate commerce and others to an independent exercise of the taxing power. The purpose to regulate foreign commerce permeates the entire congressional plan. The revenue resulting from the duties

" is an incident to such an exercise of the power. It flows from, but does not create the power." *Id.*

The principle invoked by the petitioner, of the immunity of state instrumentalities from federal taxation, has its inherent limitations. *Fox Film Corp.* v. *Doyal,* 286 U.S. 123, 128. It is a principle implied from the necessity of maintaining our dual system of government. *Collector* v. *Day,* 11 Wall. 113, 127; *Willcuts* v. *Bunn,* 282 U.S. 216, 225; *Indian Motocycle Co.* v. *United States,* 283 U.S. 570, 575. Springing from that necessity it does not extend beyond it. Protecting the functions of government in its proper province, the implication ceases when the boundary of that province is reached. The fact that the State in the performance of state functions may use imported articles does not mean that the importation is a function of the state government independent of federal power. The control of importation does not rest with the State but with the Congress. In international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power. There is thus no violation of the principle which petitioner invokes, for there is no encroachment on the power of the State as none exists with respect to the subject over which the federal power has been exerted. To permit the States and their instrumentalities to import commodities for their own use, regardless of the requirements imposed by the Congress, would undermine, if not destroy, the single control which it was one of the dominant purposes of the Constitution to create. It is for the Congress to decide to what extent, if at all, the States and their instrumentalities shall be relieved of the payment of duties on imported articles.

The contention of the petitioner finds no support in the history of tariff acts or in departmental practice. It is

not necessary to review this practical construction. It is sufficient to say that only in recent years has any question been raised by state officials as to the authority of Congress to impose duties upon their imports.

In view of these conclusions, we find it unnecessary to consider the questions raised with respect to the particular functions of the petitioner and its right to invoke the principle for which it contends.

Judgment affirmed.

FIRST NATIONAL BANK OF SHREVEPORT ET AL. *v.* LOUISIANA TAX COMMISSION ET AL.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

No. 293. Argued January 12, 1933.—Decided March 20, 1933

1. Where several suits were consolidated for trial and tried in a state court, appealed to the state supreme court on a single transcript, and there docketed and argued as one case and disposed of by a single written opinion,—*held* a complete consolidation reviewable in this Court by a single appeal, although there was a separate judgment for each suit in the trial court. P. 62.
2. A state law taxing all the property of banks that make loans mainly from money of depositors, but exempting other competing moneyed capital employed in making loans mainly from money supplied otherwise than by deposits, is consistent with the equal protection clause of the Fourteenth Amendment. P. 63.
3. To avoid a state tax on national bank shares under R.S., § 5219, it is necessary to prove not only that the bank was authorized to engage in, but that, during the tax year, its moneys were actually and in substantial amount employed in, some line of business which was then being carried on also by other and less heavily taxed moneyed capital. So *held* where there was no reason to suppose that national banks were prevented from competing by the tax discrimination. P. 64.
4. The evidence in this case does not prove that the complaining national banks were engaged in lending money on real estate mortgages, or were in competition with "small loan" companies, so-called Morris Plan and Morgan Plan companies, or automobile